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DRAFT PAPER

A Tale of Two Europe's: European Regions from Berlin to Lisbon

Europe's Regions and the European Union

The development of the European Union over the past fifty years has been nothing short of revolutionary, as the role of the nation-state has altered to adjust to a new supra-national reality.¹ In tandem with this supra-national revolution changes at the local, and particularly the “regional” level, have also undergone something of a revolution themselves.² This “unexpected” revolution occurred at the sub-national level with far less fanfare. It saw the rise of regional governments across Europe in years since 1945 to the extent that some form of regionalism has become the norm in the majority of Member States. The reasons for this development are too complex to be discussed here. In this article we instead examine the role of the regional tier in the European Union and how the changing nature of the Union in the years since 1989 have impacted upon their European role.

The regions became feature of the European debate in the wake of the Single European Act, as the German *Länder* in particular extracted a number of concessions from the Federal authorities as the price for their support of the act in the *Bundesrat*. Bouyed by their success in 1986, the Treaty on European Union presented an even greater opportunity for the regions to influence the European project. This led to the creation of an alliance of regional governments led by the German *Länder* and their Belgian counterparts but aided by broad range of regions from across the Member States. The early organisation of this group and the establishment of a united front meant that the regional level achieved more at the Maastricht negotiations than it had from the SEA particularly. In SEA, the German regions had largely negotiated with the *Bund* alone, at the end of the process and any concessions could therefore only be domestic in nature. Maastricht, by contrast, represented a collective pan-European approach by the regions to their role in the EU. As a result, concessions were achieved at the European level and even within the text of TEU itself. These successes were still limited, however, but the general assumption was that the regions were now a force to be reckoned. To quote Charlie Jeffrey, the *Länder* had struck back, and they had done so with the help of their European regional allies. This, allied with the pro-regional tendencies of Delors (particularly his ultimately unsuccessful attempt to provide regional development funds directly to regional authorities) led many to explore the possibility that the EU may prove to be a Europe of Regions as much as a Europe of States.³ Looking back on this period with the benefit of nearly two

1 I will leave the rather more contentious issue of whether this revolution has led to the saving of the European nation-state or its burial, to others.

2 The definition of “region” is somewhat problematic, but is beyond the scope of this article. See Hopkins WJ, *Devolution in Context*, 2002

3 See Gary Marks, *et al*

decades worth of hindsight, we can see that these predictions were wildly wrong. Within five years, the weakness of the regional alliance had been cruelly exposed and, to quote Jeffrey again, this time the *Länder*, far from striking back, rather weakly struck out.⁴

This was not to be the end of the story, however and reports of the death of the regions were to prove greatly exaggerated. As the events of the Constitutional Treaty and Lisbon have made clear, the legislative regions of Western Europe in particular remain an important piece of the Union's constitutional jigsaw. However, it has also become clear that the re-emergence of the regions as a force in the EU, is not a pan-European phenomenon. The regional renaissance that underpinned the Europe of the Regions idea, stopped at the Oder leaving regional legislative autonomy as Western European phenomenon. Lisbon has confirmed that although a Europe of Regions is no longer a likely outcome, the EU must still adapt to a Europe with Regions. The asymmetrical nature of Europe's regional tier means that achieving this will be a significant challenge.

The Single European Act

As mentioned above, it was the Single European Act of 1986 that gave Europe's regional tier, and in particular the German *Länder* their first opportunity to flex their muscles on the European stage. It also gave the first hint, that all may not be well with the regional level. The Single European Act (the SEA), despite its name, was actually a set of amendments to the EC Treaties designed to speed up the creation of the Single European market. In 1986, regional government in Europe was in its infancy. In practice therefore, the German *Länder* were the only ones capable of exerting meaningful pressure in relation to the SEA. This was aided by the fact that the nature of these changes demanded that they be passed through the German *Bundesrat*, the upper house of the German Parliament.⁵ This chamber comprises the executives of the *Länder* and the requirement gave the German regions a rare chance to force the federation to listen to their demands.

The German *Länder* were late in realising their potential influence in the process. This meant that their campaign was focussed only on the threat of a veto of the SEA in the *Bundesrat* rather than influencing the nature of the SEA itself. There was also the problem that the *Länder*, despite their protestations, were generally supportive of the SEA and had traditionally been pro-European in their policies. In effect they wanted to be "let in" but their only card was to threaten to derail the SEA and thus the European project.

The campaign itself focussed on re-classifying European decision-making as a form of domestic rather than international law. As such, like other areas of domestic decision making, there should be regional involvement. The result of the standoff was a package of measures which gave the German *Länder* greater involvement in developing the *Bund's* negotiating position and a limited presence on a number of German European delegations. In particular, the post of *Länder* Observer on the Council of Ministers was given formal status, *Länder* Civil Servants were given positions on various Comitology Committees and the *Bund* gave a commitment to accept agreed *Länder* positions as German positions on certain matters in the Council of Ministers.

These measures proved far less effective than the *Länder* had hoped, primarily as the *Länder's* nationally focus campaign could only deliver changes at the national level. In particular, the *Bund's* agreement to accept *Länder* positions in particular areas of competence proved difficult to implement in practice as unanimous agreement between the regions was impossible within the tight timeframes of European negotiation. More generally, the problem was that the aspirations for input into the European decision making process of the various German regional governments could not be fitted within the national framework. Effective delivery of a "let us in" EU strategy would need to be achieved at the European level itself.

⁴ Charlie Jeffrey

⁵ Legislation which affects the powers of the *Länder* and constitutional amendments must pass through this chamber.

The Rise of the Third Level – The Treaty on European Union

Although the SEA episode did deliver some important concessions for the German *Länder* it was very much the warm up act for the main event at Maastricht six years later. It was in the run up to the signing of the Maastricht Treaty on European Union in 1992 that Europe's regions now styling themselves as Europe's 'third level' of government really emerged as a significant force. Learning from the efforts of the German *Länder* in 1986, Europe's regions now began their efforts much earlier. Again the German regional governments took the lead but this time they had willing and able allies.⁶ Together, the regional tier used the nature of the TEU and its drawn out negotiation to press for concessions in the Treaty itself.

The key to the campaign were the so called 'ten Munich theses' which had emerged from the Conference on European Minister-Presidents, a German inspired group of regional government executives which met regularly during the negotiation process.⁷ These received the blessing of several pan-European organisations, including the Association of European Regions and were eventually boiled down to four regional demands that were portrayed as the price for regional support for any Treaty.⁸

The main demand was the establishment of a European Union institution that would represent the interests of the Europe's regions. This in the eyes of the *Länder* would be the embryonic beginnings of a European senate to represent the 'third level' of European government beneath that of the Union/Community and the Member States.⁹

In addition to the regional institution, Europe's regions demanded a subsidiarity clause which would recognise that powers should only be transferred to higher levels of government such as the European Union, when smaller units of government were unable to deliver the desired policy outcomes.¹⁰ They also desired direct access to European Court of Justice, (as accorded to Member States) or failing that, through the collective Regional Institution, particularly to defend the subsidiarity clause. Their final demand was an amendment to the Treaty of Rome to allow regional ministers to sit as official members of national delegations at the Council of Ministers when Member State government or domestic constitutional arrangements deemed this appropriate.¹¹

In the negotiations that followed the regions managed to achieve three of their four demands, at least in some form, with only direct access to the ECJ proving too much for the Member States to accept. This was achieved both by the operation of the pan-European alliance encouraged by the German *Länder* but perhaps more so by the specific veto powers held by the German regions and their Belgian allies and the presence of regional members on the national delegations of these two Member States. In fact both the Subsidiarity clause and the formal involvement of regions in the Council were adopted after Belgian initiatives.¹²

On the basis of this success it appeared that the "Third Level" was indeed a reality and it was not long before academics had coined the term a "Europe of the Regions" to describe the phenomenon of the rising pan-European regional tier.¹³ There was even the suggestion among the more extreme

6 In particular, by 1992 both Spain and Belgium's regional systems were relatively settled.

7 Charlie Jeffery

8 Ibid.

9 'The long-term goal remains the further development of the Committee of the Regions into a 'third chamber', alongside the European Parliament and the Council of Ministers...', Erwin Teufel, Minister-President of Baden-Württemberg, *Institutional Reform*, Committee of the Regions, Brussels, May 1995

10 The concept of Subsidiarity is highly contested. The fact that both Pope Pius XI and the anarchist writer Prudhomme were able to agree on the concept perhaps gives some indication of its nebulous nature. The European Commission actually offered a prize in 1992 for a satisfactory definition, but it was never awarded.

11 Prior to the TEU the Council of Ministers could only comprise national Ministers, even though in some states (notably Belgium) the national level had no responsibilities (and thus no expertise or authority) in the areas under discussion.

12 Charlie Jeffery

13 The exact genesis of this phrase is open to some debate, although certainly, with Gary Marks sometimes given

proponents of the thesis that the regions could even replace the Member-States as the sub-European building blocks of the EU.¹⁴ Such claims were never made by most of the regional governments and the *Länder* notably shied away from such comments. Nevertheless the creation of a true Third Level appeared to be at least a possibility in the brave new world of the European Union.

The Fall of the Third Level

History has proven such predictions to be inaccurate. Far from being the beginnings of a “Europe of the Regions”, the success of the regional governments in securing limited concessions from the Treaty on European Union was to prove the high water mark of this particular idea.¹⁵ The fall of the Third Level and the whole Europe of the Regions idea was swift and occurred primarily because those who had championed it soon became disillusioned with the reality of what they had achieved. The catalyst for the demise of the regional idea was the failure of the Committee of the Regions (CoR).

In part this was due to the weak nature of the Committee which was far removed from the European Senate, imagined by the German *Länder*. The CoR was consultative only and although its opinion was required in a number of key European policy areas, such opinions could be ignored without any reference to them by the Commission and the Council. The influence of the Committee would depend only upon the quality of its decisions. In the event the quality of the opinions proved to be poor and overly generalist failing to give the detailed comments that might have given the committee a degree of respect.

The reasons for this can be traced back to the creation of the regional tier itself and exposed the fact that far from being a coherent ‘Third Level’ the regions of the EU remain trapped in their national contexts. The harsh truth for the more powerful “legislative” regions in particular was that, despite their encouragement, all regions in the European Union were not equal. They have a variety of powers and responsibilities and continue to operate primarily within a national context. This reality came into sharp focus during the early days of the Committee of the Regions.

Although the ‘Europe of the Regions’ thesis focussed on the more powerful regional governments such as those of Germany, Belgium and Spain, in doing so it glossed over the fact that regions in other parts of the European Union perform a far less important constitutional role. Indeed, in a number of countries, notably the United Kingdom (prior to 1999) there were no regional governments at all. The various sub-national structures of the European Member-States and the jealousy of the national executives also led to the Committee’s members being appointed according to nationally agreed processes. The extent to which the national delegations actually comprised regional representatives was thus in the hands of the national governments. In practice, only those regional governments with sufficient national political or constitutional power were able to ensure their presence on the committee. The result was a committee with a huge variety of local, regional and national representatives. The idea that a Minister-President of Bavaria could talk meaningfully with a local councillor from the UK was farcical and there was soon a major split in the committee. On the one hand there were the primarily local government representatives who perceived the Committee as a technical body, charged with delivering opinions on the practical impacts of delivering proposed European Union policies. On the other hand, representatives from the legislative regions regarded it as having a policy advisory role. This approach was often ridiculed outside the federal/regionalist states, but it was in fact well founded. The more powerful, legislative regions performed such a policy role in their domestic systems and naturally saw the CoR as an extension of this. Local government representatives whose role was far more policy delivery in their domestic context, understandably favoured a much more technical approach.

credit for the concept, however, his concept of “Multi-Level Governance” is slightly different

14 K Ohmae, *The End of the Nation-State: The Rise of Regional Economies*, The Free Press, New York (1995)

15 C Jeffery, *Farewell the Third Level? The German Länder in the European Policy Process* (1996) *Regional and Federal Studies* 6.

To compound the problem of the local/regional divide, there was a tendency of the Committee to split on geographical grounds between southern and northern representatives. Some delegations, particularly in the south, also saw themselves as national delegations rather than individual representatives of regions or even regional interests. As a result of all these factors, the opinions of the Committee were often poorly considered and added little to the decision making process of the Union. In almost all cases they were ignored. With the Committee proving a huge disappointment (along with some of their recent Regional allies) the powerful regions and the *Länder* in particular, abandoned the “Europe of the Regions” idea and instead retreated into a nationally focussed approach to EU policy.

The consequences of this were clearly visible in 1997 when the next phase of the European Union’s development culminated with the Treaty of Amsterdam. In contrast with the regional influence at Maastricht, Amsterdam was notable only for its absence. Little, if any, regional influence was discernable from the Treaty itself, despite the Committee of the Regions presenting various demands to the Member-States. The reasons for this were that the powerful regions had quietly abandoned the idea of a “Third Level” of government in the European Union.¹⁶ Instead began to focus their efforts on gaining domestic influence on European policies through the medium of the national government. Such a policy, it was calculated would be more likely to achieve the aims of the regions, particularly as they moved towards a sceptical attitude towards the EU itself.

Lacking the strong backing of the legislative regions the Committee of the Regions and the “Europe of the Regions” itself was perceived as something of a busted flush, lacking any leverage over the Member-States. This trend towards division within the European regional ranks was further exacerbated by the parallel series of events which provided the backdrop of the early 1990s and form the theme of this conference.

The collapse of the Soviet Union and its European imperial ambitions, symbolised by the fall of the Berlin Wall in 1989, opened a new chapter in the history of Europe and as it would prove, the European Union. In 2004, the Union expanded to the east taking the former members of Comecon into the fold. In doing so, Europe’s centre of gravity shifted eastwards. The influence of the eastwards shift has certainly not been recognised in debate around the regional tier and its future. This is unfortunate, as it has been fundamental and relatively simple to grasp. As has been hinted at above, the drive behind regional involvement in the EU has largely centred around the existence of autonomous “legislative” regions, some with a significant role within their domestic constitutional system. Other regional entities exist and are important, but their ability (and sometimes desire) to exert influence at the European level has been minimal. If they have had any role at all it has largely been on the coat tails of their more powerful cousins. The problem was that the new Member States states brought with them no such legislative regions.

Regional autonomy was not been a feature of the post-communist constitutional re-construction that occurred in the years after 1989. The reasons for this are beyond the scope of this paper but it is notable that in contrast to the west, where the experience of fascist dictatorship led directly to a number of decentralised regionalist or federal constitutions, the Communist era did not have the same impact on the post-Communist constitutions. This left legislative regions, as largely a western phenomenon, created a strange asymmetry within the Union, and put a final nail in the coffin of the Europe of Regions idea. What this means for the regions, remains to be seen, but the this asymmetry should not lead us to assume that the regional tier no longer matters. As the recent Constitutional and Lisbon Treaties have shown, the legislative regions in particular remain relevant to the EU but their western focus will make their incorporation into the EU structures more difficult. This feeling of isolation may also explain the clear tendency of the legislative regions to press for defensive measures to protect their autonomy rather than positive involvement in the European policy process.

¹⁶ In fact many senior regional leaders no longer attended.

The Constitutional Treaty, Lisbon and the Regions

The disappointment of the Maastricht reforms for the regional tier and the subsequent realisation that the Europe of Regions, was little more than a pithy slogan led many to assume that the regional “question” in Europe, was merely a footnote to the EU's development. The regions too retreated back to their national roots and in many cases began to adopt a more critical stance on the European project as a whole. The concern of the German *Länder* that the EU offered an open flank to their domestic constitutional protections began to be shared by other regions and far from being an ally against the central state, the EU began increasingly to be viewed as an “enemy” itself. The regions focussed their energies less on getting into the EU's decision process and more on excluding the EU altogether. This led to a more parochial approach by many regions, who increasingly focussed on lobbying the national level to defend their patch, rather than concerning themselves with creation of a pan-European regional lobby.

In fact the regional level has proved far more resilient than might have been imagined and those who imagined that it was no longer a feature of the EU have been proved as equally incorrect as those who originally proclaimed its impending dominance in the first place. The European Convention and the subsequent Lisbon Treaty have shown that the regional level is far from irrelevant to the future of the EU but its place seems to be very different from that which was predicted in 1992.

The failure of regional governments to have any significant impact at Amsterdam was largely due to the failure of the strong regions to back the demands of the pan-European regional institutions, in particular the Committee of the Regions. The Committee alone is a very weak player in the EU game, for reasons that have been briefly explored above, and in the constitutional stakes, its opinion only has weight if it is back by powerful allies. At times these can be found in the Member States but more normally, it depends upon the commitment of the stronger constitutional regions for its leverage. In the case of Germany and Belgium, the ability of the regional tier to scupper any European Treaty means that their views cannot be ignored. In other countries, such as the UK and Spain, the power of the regional tier, although not constitutionally entrenched, can still be politically significant. The existence of regionalist/micro-nationalist parties (often in government) means that their influence can also be crucial. In all cases, the regional levers are applied through the Member State and it is only when this occurs that the Committees views have any real weight. In 1999 this did not occur.

2002, was a different matter, however as by then the regional tier had been realigned. In particular the legislative regions has abandoned any notion of idealistic pan-Europeanism, instead they saw themselves as a distinct group which, in their view, deserved a greater role in European affairs. This would only be achieved if they worked as a group. It was with this realist aim in mind that the Conference of European Regions with Legislative Power (RegLeg) was established 2001. The establishment of this political network (which had its roots in the Flanders declaration of 2000) marked a recognition that the more powerful regions needed to go it alone in establishing greater influence in the EU.¹⁷ It also explicitly recognises that the regional question, is a western European phenomenon at least for now. The reason for the re-emergence of the regional tier, owes at least something to the establishment of devolved governments in the United Kingdom. With both Wales and Scotland having a micro-nationalist rationale, they were clearly interested in developing a European role and have been leading figures in the development of the RelLeg group.

The fruits of this new co-operation were to be found in the Constitutional Treaty and have all been carried forward to the Treaty of Lisbon. Both of these documents have delivered a number of “wins” for the regional tier, than can largely be attributed to the RegLeg groups formal and informal activities. Perhaps the most symbolically significant has been the granting of access to European Court of Justice for the Committee of the Regions for actions alleging a breach of subsidiarity. This

17 Who Governs Scotland – Alex Wright

marks the completion of the unfinished business of Maastricht for the regions and clearly links the current regional demands back to those of 1992.

This has been coupled with an explicit recognition that the principle of subsidiarity includes the regional levels in the revised version of Article 5(3) of the TEU.¹⁸

“Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level *or at regional and local level*, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.”

This clarification of the subsidiarity principle within the EU legislative process is a significant success for the regions and again can be linked back to the 1992 negotiations. The new form is far more in line with that originally envisaged when it was first introduced by Belgium, at the instigation of its regions during the Maastricht negotiations. During those negotiations, of course, the principle as finally included in the treaty was very different as a result of the rather unholy alliance between certain Member States (particularly the UK) and a number of regionalised Member States at the instigation of their regions (notably German *Lander* and their Belgian counterparts).

This new recognition of the regional aspects of subsidiarity comes with a number of uncertainties, however. It is far from clear whether the ECJ will warm to the principle of subsidiarity. The fact that the principle is now justiciable does not, in itself, mean that it will be a particularly effective concept. The ECJ was reticent to engage with the concept in the past and although it will have no choice but to apply the principle, how it does so will remain in the hands of the judges. It should be noted that attempts by the German *Lander* to force the German court to adjudicate upon the concept in the German Basic Law, in relation to concurrent competences has proved less than successful.

Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality expands upon the proposed Article 5(3) and for the first time, specifically makes reference to the regional tier:

“Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the *regional and local* dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.”¹⁹

Once again the extent of its application is unclear, although reports suggest that the Commission at least is already operating in its spirit. This protocol also outlines the early warning system that this protocol outlines also gives the opportunity for regional involvement though those states where the second chamber is regional in its nature.²⁰ The effectiveness of the alarm bell procedure remains open to debate.

Nevertheless, the fact that some regional demands (often in tandem with Member States ones) were incorporated within the final Lisbon Treaty is clearly an advance for the regions when compared with the failures of Amsterdam. The use of Member State leverage to achieve advances at the European level was the hallmark of the regional approach to the Convention (and later Lisbon) as it had been at Maastricht but it is a tighter group than used in 1992 that has achieved it. The nature of the regional “successes” is also worthy of note as they are defensive in nature, representing the regions' continued scepticism towards the European project.

Other achievements pushed for by the RegLeg group (and incidently, the CoR and the AER) are more positive and include recognition of cultural and linguistic diversity of the EU as a core value, recognition of the principle of territorial cohesion across EU policies and a recognition that regional and local governments are ‘fundamental structures’ which the Union must respect. Perhaps

18 Article I-9, Preamble Part II & Protocol no. 2 (on Subsidiarity and Proportionality)

19 Articles 5 and 6 also make specific reference to legislative regions

20 In practice, this primary applies on to Belgium, Austria and Germany

surprisingly, small additional regional gains were achieved in the Lisbon Treaty itself such as the inclusion of regional and local levels in the new Services of General Interest Protocol, as well as an extension of the Committee of the Regions' mandate from four to five years, thus bringing it into line with the EU institutions.

The Future of Europe's Regions in the post-Lisbon EU

The future for Europe's regional tier in the post-Lisbon era remains unclear. The ability of RegLeg to co-operate and achieve some of their goals during the recent reform processes highlights their ability to co-operate effectively. The links back to the regional strategy at Maastricht are also hard to ignore. Whether this co-operation will extend beyond the Lisbon process, remains to be seen but the signs are that the RegLeg group will continue to operate to defend their interests. The key point here is “defend”, however and the tone of the network's comments seems to be focussed on this approach. They are well aware that the subsidiarity gains of the Lisbon/Convention process are only potential gains and everything will depend upon how they are applied in practice. Their involvement in policy development is also seen as crucial, and it may be through an active engagement of the regional tier, that they can be won back to the European cause from their current quasi-critical position.

The wider problem for the EU is incorporating the regional tier as a whole into the new constitutional structures. The third level is now divided not only by their domestic constitutional roles and status but by geography. Regions are largely a western phenomenon and autonomous ones are exclusively so (if we put Finland in the “western” camp for these purposes). This asymmetry makes establishing a regional space in the European project difficult. It is not impossible, however and the solution it would seem lies in re-thinking the whole constitutional approach of the EU.

The tendency of the European Union has always been to operate on a one size fits all approach with asymmetry being seen as a danger to the European project or a weakness. However, given that such asymmetrical structures are the norm for federal systems today, it seems strange that the EU, that most unique of federal entities shies away from them. Within the EU, Spain, Belgium, France, the UK, Italy and Portugal all operate asymmetrical federal or regional arrangements. This does not cause the collapse of the state although it can make things messy. In dealing with the regional imbalance in the EU's Member States (and perhaps in other matters), this approach also needs to be embraced. Perhaps we just have to accept that the Europe of the Regions was never going to be a reality and pan-European institutions such as the CoR, although well meaning will never succeed. The EU must therefore get used to being a Europe with Regions and the only way to do this may be to develop institutions that are not pan-European in nature and instead reflect the reality of European regionalism. In this vein, the CoR's recent Whitepaper on Multi-Level Governance, which has received the support of the RegLeg group offers perhaps a glimpse of a future with Regions. If the EU fails to take these issues seriously then it risks creating a disgruntled group of potentially powerful governments, where it should naturally find allies. Given the bruising experience of the past decade, this author would suggest that in the next few years needs all the friends it can get.